



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0039/P2  
DAK:cjs:ch&jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1       **AN ACT *to repeal*** 50.06 (2) (am) 2. a., 50.06 (2) (am) 2. b., 880.01 (4), 880.01 (5),  
2       880.01 (6) and (7), 880.01 (7m), 880.01 (8), 880.03, 880.07 (1m), 880.07 (4),  
3       880.08 (1) (title), 880.08 (2), 880.08 (3) (title), 880.08 (3) (e), 880.09 (1) (title),  
4       880.09 (3) (title), 880.09 (4), 880.09 (5), 880.09 (7) (title), 880.12, 880.125, 880.13  
5       (3), 880.15 (1m), 880.15 (2), 880.173 (title), 880.173 (2), 880.175 (title), 880.19  
6       (title), 880.19 (1) (title), 880.19 (2) (title), 880.19 (3) (title), 880.19 (4) (title),  
7       880.19 (5) (title), 880.19 (5) (d), 880.191 (title), 880.192, 880.21, 880.22 (title),  
8       880.22 (1) (title), 880.22 (2) (title), 880.23 (title), 880.24 (title), 880.24 (1), 880.25  
9       (title), 880.251, 880.26 (title), 880.31 (title), 880.33 (2) (d), 880.33 (4m) and (4r),  
10       880.34 (6), 880.38 (1) and 880.39 (title); ***to renumber*** 50.06 (title), 50.06 (2) (b),  
11       50.06 (3) (a) to (g), 50.06 (5) (a) 1. to 3., 880.06 (title), 880.07 (1) (a), 880.07 (1)  
12       (c), 880.07 (1) (e), 880.07 (1) (f), 880.07 (1) (g), 880.13 (title), 880.13 (2) (title),  
13       880.15 (title), 880.17, 880.18 (title), 880.24 (3) (a) 1. to 3., 880.24 (3) (a) 4., 880.33  
14       (2) (b), 880.331 (4) (intro.), 880.331 (5) (d) and 880.36 (title); ***to renumber and***  
15       ***amend*** 50.06 (1), 50.06 (2) (intro.), 50.06 (2) (a), 50.06 (2) (am) 1., 50.06 (2) (am)

2. (intro.), 50.06 (2) (c), 50.06 (3) (intro.), 50.06 (4), 50.06 (5) (a) (intro.), 50.06 (5) (b), 50.06 (6), 50.06 (7), 880.01 (1), 880.01 (2), 880.01 (3), 880.02, 880.04 (title), 880.04 (1), 880.04 (2), 880.04 (2m), 880.04 (3), 880.05, 880.06 (1), 880.06 (2), 880.07 (title), 880.07 (1) (intro.), 880.07 (1) (b), 880.07 (1) (d), 880.07 (1) (h), 880.07 (1) (i), 880.07 (1) (j), 880.07 (2), 880.08 (intro.), 880.08 (1), 880.08 (3) (am) (intro.), 880.08 (3) (am) 1., 880.08 (3) (am) 2., 880.08 (3) (am) 3., 880.08 (3) (am) 4., 880.08 (4), 880.09 (intro.), 880.09 (1), 880.09 (2), 880.09 (3), 880.09 (6), 880.09 (7), 880.10, 880.13 (1), 880.13 (2) (a), 880.13 (2) (b), 880.14, 880.15 (1), 880.15 (1s), 880.15 (3), 880.173 (1), 880.175, 880.18, 880.19 (1), 880.19 (2) (a), 880.19 (2) (b), 880.19 (3), 880.19 (4) (a), 880.19 (4) (b), 880.19 (4) (c), 880.19 (5) (a), 880.19 (5) (b), 880.19 (5) (c), 880.19 (6), 880.191 (1), 880.215, 880.22 (1), 880.22 (2), 880.23, 880.24 (2), 880.24 (3) (title), 880.24 (3) (a) (intro.), 880.24 (3) (b), 880.245, 880.25 (1), 880.25 (2), 880.25 (3), 880.25 (4), 880.25 (5), 880.26 (1) (intro.), 880.26 (1) (a), 880.26 (1) (b), 880.26 (1) (c), 880.26 (2) (intro.), 880.26 (2) (a), 880.26 (2) (b), 880.26 (2) (c), 880.26 (2) (d), 880.26 (3), 880.27, 880.28, 880.31 (2), 880.31 (3), 880.31 (6), 880.33 (1), 880.33 (2) (a) 1., 880.33 (2) (a) 2., 880.33 (2) (a) 3., 880.33 (2) (e), 880.33 (5), 880.33 (5m), 880.33 (7), 880.33 (8) (b), 880.331 (title), 880.331 (1), 880.331 (2), 880.331 (3), 880.331 (4) (a), 880.331 (4) (b), 880.331 (4) (c), 880.331 (4) (d), 880.331 (4) (e), 880.331 (4) (f), 880.331 (5) (intro.), 880.331 (5) (a), 880.331 (5) (b), 880.331 (5) (c), 880.331 (5) (e), 880.331 (5) (f), 880.331 (5) (g), 880.331 (6), 880.331 (7), 880.331 (8), 880.34 (title), 880.34 (1), 880.34 (4), 880.34 (5), 880.35, 880.36 (1), 880.36 (2), 880.38 (title), 880.38 (2), 880.38 (3) and 880.39; **to consolidate, renumber and amend** 880.31 (1) and (7) and 880.31 (4) and (5); **to amend** 29.161, 29.164 (3) (e), 29.171 (1), 29.173 (1), 29.182 (4m), 29.184 (6) (c) 1r, 29.184 (6) (c) 2., 29.231 (1), 29.235 (1),

1 29.512 (1), 46.011 (intro.), 343.31 (title), 343.31 (3) (a) and 757.48 (1) (a); and  
2 **to create** 29.024 (2u), chapter 54, 343.06 (1) (L), 343.31 (2x) and 440.121 of the  
3 statutes; **relating to:** guardians and wards

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 **SECTION 1.** 29.024 (2u) of the statutes is created to read:

5 29.024 (2u) REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY. The  
6 department shall revoke any license authorizing hunting issued to an individual for  
7 whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d.  
8 stating that the individual is incompetent to apply for a hunting license under this  
9 chapter.

10 **SECTION 2.** 29.161 of the statutes is amended to read:

11 **29.161 Resident small game hunting license.** A resident small game  
12 hunting license shall be issued subject to ~~s.~~ ss. 29.024 and 54.25 (2) (c) 1. d. by the  
13 department to any resident applying for this license. The resident small game  
14 hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

15 **SECTION 3.** 29.164 (3) (e) of the statutes is amended to read:

16 29.164 (3) (e) *Notification; issuance; payment.* The department shall issue a  
17 notice of approval to those qualified applicants selected to receive a wild turkey  
18 hunting license. A person who receives a notice of approval and who pays the fee in  
19 the manner required by the department shall be issued a wild turkey hunting license  
20 subject to ss. 29.024 and 54.25 (2) (c) 1. d.

**SECTION 4**

**SECTION 4.** 29.171 (1) of the statutes is amended to read:

29.171 (1) A resident archer hunting license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license.

**SECTION 5.** 29.173 (1) of the statutes is amended to read:

29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this license.

**SECTION 6.** 29.182 (4m) of the statutes is amended to read:

29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred under ~~par. (g) sub. (4) (g)~~, only one resident elk hunting license in his or her lifetime, and the resident elk hunting license shall be valid for only one elk hunting season. The issuance, or transfer under ~~par. (g) sub. (4) (g)~~, of the license to the person is subject to ~~s. ss.~~ 29.024 ~~(2g)~~ and 54.25 (2) (c) 1. d.

**SECTION 7.** 29.184 (6) (c) 1r. of the statutes is amended to read:

29.184 (6) (c) 1r. The department shall issue a notice of approval to those qualified applicants selected to receive a Class A bear license. A person who receives a notice of approval and who pays the fees required for the license shall be issued the license subject to ~~s. ss.~~ 29.024 ~~(2g)~~ and 54.25 (2) (c) 1. d.

**SECTION 8.** 29.184 (6) (c) 2. of the statutes is amended to read:

29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~s. ss.~~ 29.024 ~~(2g)~~ and 54.25 (2) (c) 1. d. by the department to any resident who applies for this license.

**SECTION 9.** 29.231 (1) of the statutes is amended to read:

1           29.231 (1) A resident sports license shall be issued subject to ~~s. ss. 29.024 and~~  
2           54.25 (2) (c) 1. d. by the department to any resident who applies for this license , and  
3           a nonresident sports license shall be issued subject to s. 29.024 by the department  
4           to any person who is not a resident and who applies for the license.

5           **SECTION 10.** 29.235 (1) of the statutes is amended to read:

6           29.235 (1) **ISSUANCE.** A resident conservation patron license shall be issued  
7           subject to ~~s. ss. 29.024 and 54.25 (2) (c) 1. d.~~ by the department to any resident 14  
8           years old or older who applies for the license. A nonresident conservation patron  
9           license shall be issued subject to s. 29.024 by the department to any person 14 years  
10          old or older who is not a resident and who applies for the license.

11          **SECTION 11.** 29.512 (1) of the statutes is amended to read:

12          29.512 (1) No person may engage or be employed for any compensation or  
13          reward to guide, direct or assist any other person in hunting, fishing or trapping  
14          unless the person is issued a guide license by the department subject to ~~s. ss. 29.024~~  
15          and 54.25 (2) (c) 1. d. No guide license for hunting or trapping may be issued to or  
16          obtained by any person who is not a resident of this state. No guide license may be  
17          issued to any person under the age of 18 years. The holder of a guide license shall  
18          comply with all of the requirements of this chapter.

19          **SECTION 12.** 46.011 (intro.) of the statutes is amended to read:

20          **46.011 Definitions.** (intro.) In chs. 46, 48, 50, 51, 54, 55 and 58:

21          **SECTION 13.** 50.06 (title) of the statutes is renumbered 54.50 (2) (title).

22          **SECTION 14.** 50.06 (1) of the statutes is renumbered 54.50 (2) (a) and amended  
23          to read:

24          54.50 (2) (a) In this ~~section~~ subsection, notwithstanding s. 54.01 (10),  
25          “incapacitated” means unable to receive and evaluate information effectively or to

1 communicate decisions to such an extent that the individual ~~lacks the capacity~~ is  
2 unable to manage his or her health care decisions, including decisions about his or  
3 her post-hospital care.

4 **SECTION 15.** 50.06 (2) (intro.) of the statutes is renumbered 54.50 (2) (b) (intro.)  
5 and amended to read:

6 54.50 (2) (b) (intro.) An individual under ~~sub. (3)~~ par. (c) may consent to  
7 admission, ~~directly from a hospital~~ to a facility, as defined in s. 50.01 (1m), of an  
8 incapacitated individual who does not have a valid power of attorney for health care  
9 and who has not been adjudicated incompetent under ch. 880 54, if all of the following  
10 apply:

11 **SECTION 16.** 50.06 (2) (a) of the statutes is renumbered 54.50 (2) (b) 1. and  
12 amended to read:

13 54.50 (2) (b) 1. No person who is listed under ~~sub. (3)~~ par. (c) in the same order  
14 of priority as, or higher in priority than, the individual who is consenting to the  
15 proposed admission disagrees with the proposed admission.

16 **SECTION 17.** 50.06 (2) (am) 1. of the statutes is renumbered 54.50 (2) (b) 2. a.  
17 and amended to read:

18 54.50 (2) (b) 2. a. Except as provided in subd. 2. b., no person who is listed under  
19 ~~sub. (3)~~ par. (c) and who resides with the incapacitated individual disagrees with the  
20 proposed admission.

21 **SECTION 18.** 50.06 (2) (am) 2. (intro.) of the statutes is renumbered 54.50 (2)  
22 (b) 2. b. and amended to read:

23 54.50 (2) (b) 2. b. Subdivision ~~1.~~ 2. a. does not apply if ~~any of the following~~  
24 applies: the individual who is consenting to the proposed admission resides with or  
25 is the spouse of the incapacitated individual.

1       **SECTION 19.** 50.06 (2) (am) 2. a. of the statutes is repealed.

2       **SECTION 20.** 50.06 (2) (am) 2. b. of the statutes is repealed.

3       **SECTION 21.** 50.06 (2) (b) of the statutes is renumbered 54.50 (2) (b) 3.

4       **SECTION 22.** 50.06 (2) (c) of the statutes is renumbered 54.50 (2) (b) 4. and  
5 amended to read:

6       54.50 (2) (b) 4. A petition for guardianship for the individual under s. 880.07  
7 54.34 and a petition for protective placement of the individual under s. 55.06 (2) are  
8 filed prior to the proposed admission.

9       **SECTION 23.** 50.06 (3) (intro.) of the statutes is renumbered 54.50 (2) (c) (intro.)  
10 and amended to read:

11       54.50 (2) (c) (intro.) The following individuals, in the following order of priority,  
12 may consent to an admission under ~~sub. (2)~~ par. (b):

13       **SECTION 24.** 50.06 (3) (a) to (g) of the statutes are renumbered 54.50 (2) (c) 1.  
14 to 7.

15       **SECTION 25.** 50.06 (4) of the statutes is renumbered 54.50 (2) (d) and amended  
16 to read:

17       54.50 (2) (d) A determination that an individual is incapacitated for purposes  
18 of ~~sub. (2) par. (b)~~ shall be made by 2 physicians, ~~as defined in s. 448.01 (5),~~ or by one  
19 physician and one licensed psychologist, ~~as defined in s. 455.01 (4),~~ who personally  
20 examine the individual and sign a statement specifying that the individual is  
21 incapacitated. Mere old age, eccentricity, or physical disability, either singly or  
22 together, are insufficient to make a finding that an individual is incapacitated.  
23 Neither of the individuals who make a finding that an individual is incapacitated  
24 may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge  
25 that he or she is entitled to or has a claim on any portion of the individual's estate.

1 A copy of the statement shall be included in the individual's records in the facility to  
2 which he or she is admitted.

3 **SECTION 26.** 50.06 (5) (a) (intro.) of the statutes is renumbered 54.50 (2) (e) 1.  
4 (intro.) and amended to read:

5 54.50 (2) (e) 1. (intro.) Except as provided in ~~par. (b)~~ subd. 2., an individual who  
6 consents to an admission under this ~~section~~ subsection may, for the incapacitated  
7 individual, make health care decisions to the same extent as a guardian of the person  
8 may and authorize expenditures related to health care to the same extent as a  
9 guardian of the estate may, until the earliest of the following:

10 **SECTION 27.** 50.06 (5) (a) 1. to 3. of the statutes are renumbered 54.50 (2) (e)  
11 1. a. to c.

12 **SECTION 28.** 50.06 (5) (b) of the statutes is renumbered 54.50 (2) (e) 2. and  
13 amended to read:

14 54.50 (2) (e) 2. An individual who consents to an admission under this ~~section~~  
15 subsection may not authorize expenditures related to health care if the incapacitated  
16 individual has an agent under a durable power of attorney, ~~as defined in s. 243.07~~  
17 ~~(1) (a)~~, who may authorize expenditures related to health care.

18 **SECTION 29.** 50.06 (6) of the statutes is renumbered 54.50 (2) (f) and amended  
19 to read:

20 54.50 (2) (f) If the incapacitated individual is in the facility after 60 days after  
21 admission and a guardian has not been appointed, the authority of the person who  
22 consented to the admission to make decisions and, if ~~sub. (5) (a)~~ par. (e) 1. applies,  
23 to authorize expenditures is extended for 30 days for the purpose of allowing the  
24 facility to initiate discharge planning for the incapacitated individual.



**SECTION 30.** 50.06 (7) of the statutes is renumbered 54.50 (2) (g) and amended to read:

54.50 (2) (g) An individual who consents to an admission under this ~~section~~ subsection may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional and financial screen to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for a financial screen under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

**SECTION 31.** Chapter 54 of the statutes is created to read:

## CHAPTER 54

## GUARDIANS AND WARDS

\*\*\*\*NOTE: "Guardians and Wards" is the title of ch. 880; is it what you want as the title of ch. 54?

\*\*\*\*NOTE: With respect to psychotropic medication, this is what I have done either in this redraft or previously in LRB-0039/P1:

- a. Repealed s. 880.01 (7m), stats. (the definition of “not competent to refuse psychotropic medication”), previously renumbered as s. 54.01 (11).
- b. Created s. 54.01 (18), a definition of “psychotropic medication,” based on the Legislative Council draft WLC: 0220/P1.
- c. Repealed s. 880.07 (1m), stats. (allegations in a petition that a person is incompetent to refuse psychotropic medication).
- d. Stricken reference to incompetence to refuse psychotropic medication from s. 54.36 (renumbered from s. 880.33 (1), stats.).
- e. Repealed s. 880.33 (4m) and (4r), stats. (court appointment of guardian to consent or refuse, standard for forcible administration).
- f. Repealed s. 880.34 (6), stats., as does WLC: 0220/P1 (annual review, etc.)
- g. Added to s. 54.25 (2) (d) 2. a. language from WLC: 0220/P1 concerning voluntary receipt by a ward of mediation, including psychotropic medication, if the ward does not

protest, prohibiting the involuntary administration of psychotropic medication, defining "protest," and creating a best interest standard.

h. Repealed s. 880.33 (2) (d), stats. (hearing on petition).

Please see my Drafter's Note concerning this topic and its treatment in this draft.

## SUBCHAPTER I

### DEFINITIONS

#### 54.01 Definitions. In this chapter:

(1) "Activities of daily living" means activities relating to the performance of self care, work, and leisure activities, including dressing, eating, grooming, mobility, and object manipulation.

\*\*\*\*NOTE: I have in this revised definition removed "feeding," which seems unrelated to *self care*, and play, which seems redundant to "leisure."

(3) "Conservator" means a person who is appointed by a court at an individual's request under s. 54.76 (2) to manage the estate of the individual.

(4) "Degenerative brain disorder" means an individual's loss or disfunction of brain calls to the extent that the individual is substantially impaired in ability to provide for his or her own care or custody.

\*\*\*\*NOTE: This is the definition (revised grammatically) from WLC: 0037/1. Does one provide for one's own custody?

(5) "Depository account" has the meaning given in s. 815.18 (2) (e).

(6) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

\*\*\*\*NOTE: I have renumbered most of the definitions in this draft, to account for added definitions. This subsection was originally numbered (3m) as a time-saving measure. In addition, I have not added "or s. 243.10" as requested. The definition under s. 243.07 (1) (a) subsumes the form for the Wisconsin basic power of attorney for finances and property under s. 243.10; in addition, s. 243.10 is not a definition per se; and, lastly, a defined term in the statutes that refers to another defined term may have only one referent (i.e., it may not be defined to be "A" or "B").

\*\*\*\*NOTE: Note that I have not included your proposed definition of "evaluative capacity." Please see the \*\*\*\*NOTE under the definition of "incapacity."

(8) "Guardian of the estate" means a guardian appointed to comply with the duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.

1           (9) "Guardian of the person" means a guardian appointed to comply with the  
2       duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25  
3       (2).

4           (10) "Incapacity" means the inability of an individual effectively to receive and  
5       evaluate information or communicate a decision with respect to the exercise of a right  
6       or power.

      \*\*\*\*NOTE: On Betsy Abramson's advice, this definition is the same language as that proposed in your "Appendix: Alternative Language" as the definition of "evaluative capacity," except that: (1) It is written in the negative (i.e., "inability," rather than "ability"); (2) I omitted "make [a decision]" "because that seems redundant to "communicate a decision;" and (3) I omitted "decisionmaking," because that seems unnecessary (all powers of an individual would appear to require some form of decisionmaking). Note that this definition replaces use of the terms "incapacity," "functional capacity, and" "evaluative capacity" throughout the draft, except for the term "incapacity of the guardian," which has been changed to "inability of the guardian." This change particularly affects the following: 54.01 (21), 54.15 (4), 54.21 (6) (a) and (c), 54.52 (2), and 54.68 (2) (f). After studying the issue further, I did *not* change the term "incapacitated" as it is used in numerous places in s. 54.50 (2) (renumbered from s. 50.06, stats.); use of that term in that subsection is subject to the definition of the term in s. 54.50 (2) (a), which limits the individual lack of capacity to health care decisions; I would think that you would want to keep this limitation. Please review.

      \*\*\*\*NOTE: I have repealed the definition of "incompetent" that was amended under 03.0039/P1, because the new language proposed for s. 54.10 replaces the definition. I also have not drafted the definition of "individual found incompetent" that was proposed, because, where the term is used, reference to s. 54.10 can be added and the defined term is then unnecessary. See, for example, this treatment in s. 54.01 (7).

7           (12) "Interested person" means any of the following:

8           (a) For purposes of a petition for guardianship or protective placement, any of  
9       the following:

      \*\*\*\*NOTE: Do you intend *in this bill* to amend ch. 55 to use this definition? Where?

- 10           1. The proposed ward, if he or she has attained 14 years of age.
- 11           2. The spouse or adult child of the proposed ward, or the parent of a proposed
- 12       ward who is a minor.

1           3. For a proposed ward who has no spouse, child, or parent, an heir, as defined  
2 in s. 851.09, of the proposed ward that may be reasonably ascertained with due  
3 diligence.

4           4. Any individual who is nominated as guardian or appointed to act as guardian  
5 or fiduciary for the proposed ward by a court of any state, any trustee for a trust  
6 established by or for the proposed ward, any person appointed as agent under a  
7 power of attorney for health care, or any person appointed as attorney-in-fact under  
8 a durable power of attorney.

      \*\*\*\*NOTE: Please note that I retained "or," rather than using "and" as proposed for  
s. 54.01 (12) (a) 2., 3., and 4., to avoid the implication that all persons specified would be  
collectively required to function as "interested persons." Also, your instructions were  
unclear: do you wish to retain "fiduciary" in the phrase "appointed to act as...?"

9           5. If the proposed ward is a minor, the individual who has exercised principal  
10 responsibility for the care and custody of the proposed ward during the period of 60  
11 consecutive days immediately before the filing of the petition.

12           6. If the proposed ward is a minor and has no living parent, any individual  
13 nominated to act as fiduciary for the minor in a will or other written instrument that  
14 was executed by a parent of the minor.

15           7. If the proposed ward is receiving moneys paid, or if moneys are payable, by  
16 the federal department of veterans affairs, a representative of the federal  
17 department of veterans affairs, or, if the proposed ward is receiving moneys paid, or  
18 if moneys are payable, by the state department of veterans affairs, a representative  
19 of the state department of veterans affairs.

20           8. If the proposed ward is receiving long-term support services or similar public  
21 benefits, the county department of human services or social services that is providing  
22 the services or benefits.

- 1           9. The corporation counsel of the county in which the petition is filed and, if the  
2 petition is filed in a county other than the county of the proposed ward's residence,  
3 the corporation counsel of the county of the proposed ward's residence.

      \*\*\*\*NOTE: I did not draft the language you proposed as a change to this subdivision from the language in LRB-0039/P1, because, under your wording, the corporation counsel of the county in which the petition is filed would *only* be included if the petition was filed in a county *other* than the county of the proposed ward's residence; I assumed that this result is not what you intend.

- 4           10. Any other person required by the court.

- 5           (b) For purposes of proceedings subsequent to an order for guardianship or  
6 protective placement, any of the following:

      \*\*\*\*NOTE: Do you intend in this bill to amend ch. 55 with this definition? If not, the reference to "for purposes of a petition for protective placement" should be eliminated.

      \*\*\*\*NOTE: Please note that I did not make the change from "any" to "all," so as to avoid the implication that an "interested person" must include all those specified.

- 7           1. The guardian.  
8           2. The spouse or adult child of the ward or the parent of a minor ward.  
9           3. Any other individual that the court may require, including any fiduciary that  
10 the court may designate.  
11          4. The county of venue, if the county has an interest.

- 12          (13) "Least restrictive" means that which places the least possible restriction  
13 on personal liberty and the exercise of rights and that promotes the greatest possible  
14 integration of an individual into his or her community that is consistent with  
15 meeting his or her essential requirements for health, safety, habilitation, treatment,  
16 and recovery and protecting him or her from abuse, exploitation, and neglect.

      \*\*\*\*NOTE: I did not draft "constitutional" to modify rights; presumably, you don't want to limit the person to constitutionally-guaranteed rights to the exclusion of statutory rights.

- 17          (14) "Meet the essential requirements for physical health or safety" means  
18 perform those actions necessary to provide the health care, food, shelter, clothes,

1 personal hygiene, and other care without which serious physical injury or illness will  
2 likely occur.

3 (15) "Physician" has the meaning given in s. 448.01 (5).

4 (16) "Proposed ward" means an individual, including a minor, a person alleged  
5 to be incompetent, and an alleged spendthrift, for whom a petition for guardianship  
6 is filed.

\*\*\*\*NOTE: Please review this definition. Because you have decided to include  
spendthrifts in ch. 54, use of this definition eliminates the necessity of specifying  
spendthrifts throughout the chapter, as does the definition of "ward."

7 (17) "Psychologist" has the means a licensed psychologist, as defined given in  
8 s. 455.01 (4).

9 (18) "Psychotropic medication" means a prescription drug, as defined in s.  
10 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging  
11 behavior.

12 (19) "Serious and persistent mental illness" means a mental illness which is  
13 severe in degree and persistent in duration, which causes a substantially diminished  
14 level of functioning in the primary aspects of daily living and an inability to cope with  
15 the ordinary demands of life, which may lead to an inability to maintain stable  
16 adjustment and independent functioning without long-term treatment and support  
17 and which may be of lifelong duration. "Serious and persistent mental illness"  
18 includes schizophrenia as well as a wide spectrum of psychotic and other severely  
19 disabling psychiatric diagnostic categories, but does not include degenerative brain  
20 disorder or a primary diagnosis of mental retardation or of alcohol or drug  
21 dependence.

\*\*\*\*NOTE: I included this definition (the same as s. 51.01 (3g), stats.,) because the  
term "serious and persistent mental illness" is now used in s. 54.15 (6) and is not, at  
present, elsewhere defined. It contains the term "infirmities of aging," which I have  
changed to "degenerative brain disorder." Please review.

(20) “Spendthrift” means an individual who, because of the use of alcohol or other drugs or because of gambling or other wasteful course of conduct, is unable to attend to business or is likely to affect the health, life, or property of himself or herself or others so as to endanger his or her support and dependents or expose the public to the support.

\*\*\*\*NOTE: I created this definition in ch. 54, instead of renumbering it from ch. 880, stats., because it is used in subchapter IV of ch. 880, stats. Do you want to move subch. IV to ch. 54? Where? Is my changed language for the definition what you want?

(21) “Standby guardian” means an individual designated by the court under s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the death or resignation of the initially-appointed guardian, or if the initially appointed guardian is temporarily or permanently unable or unavailable to fulfill his or her duties.

(22) “Ward” means an individual for whom a guardian has been appointed.

## SUBCHAPTER II

## APPOINTMENT OF GUARDIAN

**54.10 Appointment of guardian.** (1) A court may appoint a guardian of the person or a guardian of the estate for a proposed ward if the court determines that the individual is a minor.

(2) A court may appoint a guardian of the estate for a proposed ward if the court determines that the individual is a spendthrift.

\*\*\*\*NOTE: Although you indicate that you wish to include spendthrifts in ch. 54, no language proposed addresses the actual appointment or any standard to be used. I have created s. 54.10 (2) to begin to address this issue. Please review.

**(3) (a)** A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual based on a finding that the individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:

1           1. The individual is aged at least 17 years and 9 months.

2           2. For purposes of appointment of a guardian of the person, because of an  
3           impairment, the individual is unable effectively to receive and evaluate information  
4           or to make or communicate decisions to such an extent that the individual is unable  
5           to meet the essential requirements for his or her physical health and safety.

6           3. For purposes of appointment of a guardian of the estate, because of an  
7           impairment, the individual is unable effectively to receive and evaluate information  
8           or to make or communicate decisions related to management of his or her property  
9           or financial affairs, to the extent that any of the following applies:

10          a. The individual has property that will be dissipated in whole or in part.

11          b. The individual is unable to provide for his or her support.

12          c. The individual is unable to prevent financial exploitation.

13          4. The individual's need for assistance in decision-making or communication  
14          is unable to be met effectively and less restrictively through appropriate and  
15          reasonably available training, education, support services, health care, assistive  
16          devices, or other means that the individual will accept.

17          (b) Unless the proposed ward is unable to communicate decisions effectively in  
18          any way, the determination under par. (a) may not be based on mere old age,  
19          eccentricity, poor judgment, or physical disability.

20          (c) In appointing a guardian under this subsection, declaring incompetence to  
21          exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate  
22          for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall consider  
23          all of the following:

24          1. The report of the guardian ad litem, as required in s. 54.40 (4) (c).



1           2. The medical or psychological statement provided under s. 54.36 and any  
2 additional medical, psychological, or other evaluation ordered by the court under s.  
3 54.40 (4) (e) or offered by a party and received by the court.

      \*\*\*\*NOTE: Are the cross-references in par. (c) (intro.), 1., and 2. what you intend?

4           3. Whether other reliable resources are available to provide for the individual's  
5 personal needs or property management, and whether appointment of a guardian is  
6 the least restrictive means to provide for the individual's need for a substitute  
7 decision-maker.

8           4. The preferences, desires, and values of the individual with regard to personal  
9 needs or property management.

10          5. The nature and extent of the individual's care and treatment needs and  
11 property and financial affairs.

12          6. Whether the individual's situation places him or her at risk of abuse,  
13 exploitation, neglect, or violation of rights.

14          7. Whether the individual can adequately understand and appreciate the  
15 nature and consequences of his or her impairment.

16          8. The individual's management of the activities of daily living.

17          9. The individual's understanding and appreciation of the nature and  
18 consequences of any inability he or she may have with regard to personal needs or  
19 property management.

20          10. The extent of the demands placed on the individual by his or her personal  
21 needs and by the nature and extent of his or her property and financial affairs.

22          11. Any physical illness of the individual and the prognosis of the individual.

1           12. Any mental disability, alcoholism, or other drug dependence of the  
2 individual and the prognosis of the mental disability, alcoholism, or other drug  
3 dependence.

4           13. Any medication with which the individual is being treated and the  
5 medication's effect on the individual's behavior, cognition, and judgment.

6           14. Whether the effect on the individual's evaluative capacity is likely to be  
7 temporary or long-term, and whether the effect may be ameliorated by appropriate  
8 treatment.

9           15. Other relevant evidence.

10           (d) Before appointing a guardian under this subsection, declaring  
11 incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers  
12 it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the  
13 court shall determine if additional medical, psychological, social, vocational, or  
14 educational evaluation is necessary for the court to make an informed decision  
15 respecting the individual's competency to exercise legal rights and may obtain  
16 assistance in the manner provided in s. 55.06 (8) whether or not protective placement  
17 is made.

18           (e) In appointing a guardian under this subsection, the court shall authorize  
19 the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) that  
20 are necessary to provide for the individual's personal needs and property  
21 management and to exercise the powers in a manner that is appropriate to the  
22 individual and that constitutes the least restrictive form of intervention.

23           (4) If the court appoints both a guardian of the person and a guardian of the  
24 estate for an individual, the court may appoint separate persons to be guardian of  
25 the person and of the estate, or may appoint one person to act as both.

54.12 (1) (e) Make payment to the agent under a durable power of attorney of the ward.

SUBCHAPTER III  
NOMINATION OF GUARDIAN;  
POWERS AND DUTIES; LIMITATIONS

54.15 (2) AGENT UNDER DURABLE POWER OF ATTORNEY. The court shall appoint as guardian of the estate the agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

\*\*\*\*NOTE: This provision is written as a requirement, as are ss. 54.15 (4) (renumbered from s. 880.09 (7)), 54.15 (5) (renumbered from s. 880.09 (2)), and 54.15 (6) (renumbered from s. 880.09 (6); what does the judge do if they conflict?

**(3) AGENT UNDER A POWER OF ATTORNEY FOR HEALTH CARE.** The court shall appoint as guardian of the person the agent under a proposed ward’s power of attorney for health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

(4) PERSON NOMINATED BY PROPOSED WARD.

(8) STATEMENT OF ACTS BY PROPOSED GUARDIAN. (a) At least 96 hours before the hearing under s. 54.44, the proposed guardian shall submit to the court a sworn and notarized statement as to whether any of the following is true:

1. The proposed guardian has been convicted of a crime, as defined in s. 939.12.

\*\*\*\*NOTE: Is this definition of a crime what you want? Note that it includes misdemeanors (which are distinguished from felonies in that felonies are punishable by imprisonment in state prison, whereas misdemeanors are punishable by imprisonment in a county jail).

2. The proposed guardian has filed for or received protection under the federal bankruptcy laws.

1           3. Any license, certificate, permit, or registration of the proposed guardian that  
2 is required under chs. 440 to 480 or by the laws of another state for the practice of  
3 a profession or occupation has been suspended or revoked.

4           (b) If par. (a) 1., 2., or 3. applies to the proposed guardian, he or she shall include  
5 in the sworn and notarized statement a description of the circumstances  
6 surrounding the applicable event under par. (a) 1., 2., or 3.

7           **54.18 General duties and powers of guardian; limitations; immunity.**

8           (1) A ward retains all his or her rights that are not assigned to the guardian or  
9 otherwise limited by statute. A guardian acting on behalf of a ward may exercise only  
10 those powers that the guardian is authorized to exercise by statute or court order.  
11 A guardian may be granted only those powers necessary to provide for the personal  
12 needs or property management of the ward in a manner that is appropriate to the  
13 ward and that constitutes the least restrictive form of intervention.

14           (2) A guardian shall do all of the following:

15           (a) Exercise the degree of care, diligence, and good faith when acting on behalf  
16 of a ward that an ordinarily prudent person exercises in his or her own affairs.

17           (b) Advocate for the ward's best interests, including, if the ward is protectively  
18 placed under ch. 55 and if applicable, advocating for the ward's applicable rights  
19 under ss. 50.09 and 51.61.

20           (c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation  
21 to the ward.

22           (d) Notify the court of any change of address of the guardian or ward.

23           (3) No guardian may do any of the following:

24           **54.19 Duties of guardian of the estate.** Except as specifically limited in the  
25 order of appointment, the guardian of the estate shall do all of the following in order

1 to provide a ward with the greatest amount of independence and self-determination  
2 with respect to property management in light of the ward's functional level,  
3 understanding, and appreciation of his or her functional limitations and the ward's  
4 personal wishes and preferences with regard to managing the activities of daily  
5 living:

6 (2) Retain, expend, distribute, sell, or invest the ward's property, rents, income,  
7 issues, benefits, and proceeds and account for all of them, subject to ch. 786.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5) (b)).

8 (3) Determine, if the ward has executed a will, the will's location, determine  
9 the appropriate persons to be notified in the event of the ward's death, and, if the  
10 death occurs, notify those persons.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5)  
(b)).

11 (4) Use the ward's income and property to maintain and support the ward and  
12 any dependents of the ward and to provide for the postsecondary education expenses  
13 of any children of the ward.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5)  
(b)).

14 (5) Prepare and file an annual account as specified in s. 54.62.

15 (6) At the termination of the guardianship, deliver the ward's assets to the  
16 persons entitled to them.

17 (8) File, with the register of deeds of any county in which the ward possesses  
18 real property of which the guardian has knowledge, a sworn and notarized statement  
19 that specifies the legal description of the property, the date that the ward is  
20 determined to be an incompetent, and the name, address, and telephone number of  
21 the ward's guardian and any surety on the guardian's bond.

22 (9) Perform any other duty required by the court order.

1           **54.20 Powers of guardian of the estate.** (1) (a) The ward's understanding  
2 of the harm that he or she is likely to suffer as the result of his or her inability to  
3 manage property and financial affairs.

4           (b) The ward's personal preferences and desires with regard to managing his  
5 or her activities of daily living.

6           (c) The least restrictive form of intervention for the ward.

      \*\*\*NOTE: Does this subsection now conform to your intent?

7           **(2) POWERS REQUIRING COURT APPROVAL.** The guardian of the estate may do any  
8 of the following with respect to the ward only with the court's prior written approval  
9 following any petition, notice, and hearing that the court requires:

10          (a) Make gifts, under the terms, including the frequency, amount, and donees  
11 specified by the court in approval of a petition under s. 54.21.

      \*\*\*NOTE: Please review s. 54.20 (2) (intro.) and (a); have I now captured your  
intent?

12          (c) Establish a trust as specified under 42 USC 1396p (d) (4) and transfer assets  
13 into the trust.

14          (d) Purchase an annuity or insurance contract and exercise rights to elect  
15 options or change beneficiaries under insurance and annuity policies and to  
16 surrender the policies for their cash value.

17          (e) Ascertain and exercise any rights available to the ward under a retirement  
18 plan or account.

      \*\*\*NOTE: I did not draft "Establish," as proposed, because a guardian would not,  
for instance, have the right to establish a right in a retirement plan; did you mean  
"Ascertain," as I have drafted? "Make application for?"

19          (f) Exercise any elective rights that accrue to the ward as the result of the death  
20 of the ward's spouse or parent.

(g) Release or disclaim, under s. 854.13, any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.

\*\*\*\*NOTE: By "lifetime transfer," do you mean during the life of the ward? If so, "lifetime" seems unnecessary; is "other" transfer, instead, okay?

(i) Provide support for an individual whom the ward is not legally obligated to support.

(j) Convey or release a contingent or expectation interest in property, including a marital property right and any right of survivorship that is incidental to a joint tenancy or survivorship marital property.

(k) Adjust, compromise, and discharge all debts and claims for damages due the ward.

\*\*\*\*NOTE: Are these debts of the ward or debts payable to the ward? If the former, the language is redundant to s. 54.19 (7) (renumbered from s. 880.22 (1)).

**(3) POWERS THAT DO NOT REQUIRE COURT APPROVAL.** The guardian of the estate may do any of the following without first receiving the court's approval:

(a) Provide support from the ward's estate for an individual whom the ward is legally obligated to support.

(b) Enter into a contract, other than a contract that is specified in sub. (2) or that is otherwise prohibited under this chapter.

(c) Exercise options of the ward to purchase securities or other property.

(d) Authorize access to or release of the ward's confidential records.

(e) Apply for public and private benefits.

(f) Take any other action, except an action specified under sub. (2), that is reasonable or appropriate to the duties of the guardian of the estate.

**54.21 Petition to transfer ward's assets to another.** (1) In this section:

(a) "Other individual" means any of the following:

1           1. The ward's spouse, if any.

2           2. The guardian ad litem of the ward's minor child, if any.

3           3. The ward's disabled child, if any.

      \*\*\*\*NOTE: What does "disabled" mean in this context? Developmental disability?  
Physical disability?

4           4. Any of the ward's siblings who has an ownership interest in property that  
5 is co-owned with the ward.

6           5. Any of the ward's children who is a caregiver, as defined in s. 46.986 (1) (b),  
7 for the ward.

      \*\*\*\*NOTE: Is the definition of "caregiver" suitable for your purposes?

8           (b) "Will or similar instrument" includes a revocable or irrevocable trust, a  
9 durable power of attorney, or a marital property agreement.

10          (2) A guardian or other individual who seeks an order directing the guardian  
11 of the estate to transfer any of a ward's assets to or for the benefit of any person shall  
12 submit to the court a petition that specifies all of the following:

      \*\*\*\*NOTE: Wouldn't "guardian" in sub. (2) (intro.) actually be "guardian of the  
person," since a guardian includes a guardian of the estate?

13          (a) Whether a proceeding by anyone seeking this authority with respect to the  
14 ward's property was previously commenced and, if so, a description of the nature of  
15 the proceeding and the disposition made of it.

16          (b) The amount and nature of the ward's financial obligations, including  
17 moneys currently and prospectively required to provide for the ward's maintenance,  
18 support, and well-being and to provide for others dependent upon the ward for  
19 support, regardless of whether the ward is legally obligated to provide the support.  
20 If the petitioner has access to a copy of a court order or written agreement that



1 specifies support obligations of the ward, the petitioner shall attach the copy to the  
2 petition.

3 (c) The property of the ward that is the subject of the petition, the proposed  
4 disposition of the property, and the reasons for the disposition.

5 (d) The wishes, if ascertainable, of the ward.

6 (e) As specified in sub. (3), whether the ward has previously executed a will or  
7 similar instrument.

8 (f) A description of any significant gifts or patterns of gifts that the ward has  
9 made.

10 (g) The names, post-office addresses, and relationships to the ward of all of the  
11 following:

12 1. Any presumptive adult heirs of the ward.

13 2. If the ward has previously executed a will or similar instrument, the named  
14 or described beneficiaries, if known, under the most recent will or similar instrument  
15 executed by the ward.

16 (3) (a) If a ward has previously executed a will or similar instrument and the  
17 petitioner is able, with reasonable diligence, to obtain a copy, the petitioner shall  
18 provide the copy to the court, together with a statement that specifies all of the  
19 following:

20 1. The manner in which the copy was secured.

21 2. The manner in which the terms of the will or similar instrument became  
22 known to the petitioner.

23 3. The basis for the petitioner's belief that the copy is of the ward's most recently  
24 executed will or similar instrument.

1 (b) If the petitioner is unable to obtain a copy of the most recently executed will  
2 or similar instrument or is unable to determine if the ward has previously executed  
3 a will or similar instrument, the petitioner shall provide a statement to the court that  
4 specifies the efforts that were made by the petitioner to obtain a copy or ascertain the  
5 information.

6 (c) If a copy of the most recently executed will or similar instrument is not  
7 otherwise available, the court may order the person who has the original will or  
8 similar instrument to provide a photocopy to the court for in camera examination.  
9 The court may provide the photocopy to the parties to the proceeding unless the court  
10 finds that doing so is contrary to the ward's best interests.

11 (d) The petitioner and the court shall keep confidential the information in a will  
12 or similar instrument, or a copy of the will or similar instrument, under this  
13 subsection, and may not, unless otherwise authorized, disclose that information.

\*\*\*\*NOTE: Does this paragraph meet your intent?

14 (4) The petitioner shall serve notice upon all of the following, together with a  
15 copy of the petition, stating that the petitioner will move the court, at a time and  
16 place named in the notice, for the order described in the petition:

17 (a) If not the same as the petitioner, the guardian of the person and the  
18 guardian of the estate.

19 (b) Unless the court dispenses with notice under this subsection, the persons  
20 specified in sub. (2) (g), if known to the petitioner.

21 (c) The county corporation counsel, if the county has an interest in the matter.

\*\*\*\*NOTE: This means that the petitioner determines whether the county has an  
interest and gets notice. Is that okay?

22 (5) The court shall consider all of the following in reviewing the petition:

23 (a) The wishes of the ward, if known.

1 (b) Whether the duration of the ward's disability is likely to be sufficiently brief  
2 so as to justify dismissal of the proceedings in anticipation of the ward's recovered  
3 ability to decide whether, and to whom, to transfer his or her assets.

4 (c) Whether the proposed transfer will benefit the ward, the ward's estate, or  
5 members of the ward's immediate family.

\*\*\*\*NOTE: I understand that this provision is sought to codify *Matter of Guardianship of F.E.H.*, 154 Wis.2d 576 (1990). Therefore, I included "immediate" as an adjective modifying "family".

6 (d) Except for gifting that is authorized under s. 54.20 (2) (a), whether the  
7 donees or beneficiaries under the proposed disposition are reasonably expected  
8 objects of the ward's generosity and whether the proposed disposition is consistent  
9 with any ascertained wishes of the ward or known estate plan or pattern of lifetime  
10 gifts that he or she has made.

11 (e) Whether the proposed disposition will produce tax savings that will  
12 significantly benefit the ward, his or her dependents, or other persons for whom the  
13 ward would be concerned.

14 (f) The factors specified in sub. (2) (a) to (g) and any statements or other  
15 evidence under sub. (3).

16 (g) Any other factors that the court determines are relevant.

17 (6) The court may grant the petition under sub. (2) and enter an order directing  
18 the guardian of the estate to take action requested in the petition, if the court finds  
19 and records all of the following:

20 (a) That the ward has incapacity to perform the act for which approval is sought  
21 and the incapacity is not likely to change positively within a reasonable period of  
22 time.

1 (b) That a competent individual in the position of the ward would likely perform  
2 the act under the same circumstances.

3 (c) That, before the ward had incapacity to perform the act for which approval  
4 is sought, he or she did not manifest intent that is inconsistent with the act.

5 (7) Nothing in this section requires a guardian to file a petition under this  
6 section and a guardian is not liable or accountable to any person for having failed to  
7 file a petition under this section.

8 54.25 (1) DUTIES. A guardian of the person shall do all of the following:

9 (b) 1. Regularly inspect, in person, the ward's condition, surroundings, and  
10 treatment.

11 2. Examine the ward's patient health care records and treatment records.

12 3. Attend and participate in staff meetings of any facility in which the ward  
13 resides or is a patient, if the meeting includes a discussion of the ward's treatment  
14 and care.

15 4. Inquire into the risks and benefits of, and alternatives to, treatment for the  
16 ward, particularly if drastic or restrictive treatment is proposed.

17 (2) POWERS. (a) *Presumption in favor of limited guardianship.* A guardian of  
18 the person has only those rights and powers that the guardian is specifically  
19 authorized to exercise by court order. Any other right or power is retained by the  
20 ward, unless the ward has been declared incompetent to exercise the right under par.

21 (c) or the power has been transferred to the guardian under par. (d).

22 (b) *Rights retained by individuals determined incompetent.* An individual  
23 determined incompetent retains the power to exercise all of the following rights,  
24 without consent of the guardian:

1           1. To have access to and communicate privately with the court and with  
2 governmental representatives, including the right to have input into plans for  
3 support services, the right to initiate grievances, including under state and federal  
4 law regarding resident or patient rights, and the right to participate in  
5 administrative hearings and court proceedings.

6           2. To have access to, communicate privately with, and retain legal counsel, with  
7 fees paid by the ward's estate, subject to court approval.

8           3. To have access to and communicate privately with representatives of the  
9 protection and advocacy agency under s. 51.62 and the board on aging and long-term  
10 care.

11           4. To protest a residential placement made under s. 55.05 (5), and to be  
12 discharged from a residential placement unless the individual is protectively placed  
13 under s. 55.06 or the elements of s. 55.06 (11) are present.

14           5. To petition for court review of guardianship, protective services, protective  
15 placement, or commitment orders.

16           6. To give or withhold a consent reserved to the individual under ch. 51.

17           7. To exercise any other rights specifically reserved to the individual by statute  
18 or the constitutions of the state or the United States, including the rights to free  
19 speech, freedom of association, and the free exercise of religious expression.

20           (c) *Declaration of incompetence to exercise certain rights.*

21           1. The court may, as part of a proceeding under s. 54.44 in which an individual  
22 is found incompetent and a guardian is appointed, declare that the individual has  
23 incapacity to exercise one or more of the following rights:

24           a. The right to consent to marriage.

25           b. The right to execute a will.

1 c. The right to serve on a jury.

2 d. The right to apply for an operator's license, a license issued under ch. 29, or  
3 a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is  
4 incapable of understanding the nature and risks of the licensed or credentialed  
5 activity, to the extent that engaging in the activity would pose a substantial risk of  
6 physical harm to the individual or others. A failure to find that an individual is  
7 incapable of applying for a license or credential is not a finding that the individual  
8 qualifies for the license or credential under applicable laws and rules.

9 e. The right to consent to sterilization, if the court finds that the individual is  
10 incapable of understanding the nature, risk, and benefits of sterilization, after the  
11 nature, risk, and benefits have been presented in a form that the individual is most  
12 likely to understand.

13 f. The right to consent to organ, tissue, or bone marrow donation.

14 g. The right to vote, if the court finds that the individual is incapable of  
15 understanding the objective of the elective process.

\*\*\*\*NOTE: Section 880.33 (9), stats., upon which this language is based, requires that the court's determination be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting that may be directed against that elector. Otherwise, I think it is possible that the official or agency may have no way of knowing if the vote is countable. Do you want this requirement added to the language? This NOTE also applies to subd. 4.

16 2. Any finding under subd. 1. that an individual lacks evaluative capacity to  
17 exercise a right must be based on clear and convincing evidence. In the absence of  
18 such a finding, the right is retained by the individual.

19 3. If an individual is declared not competent to exercise a right under subd. 1.  
20 or 4., a guardian may not exercise the right or provide consent for exercise of the right  
21 on behalf of the individual. If the court finds with respect to a right listed under subd.

1 1. a., d., e., or f. that the individual is competent to exercise the right under some but  
2 not all circumstances, the court may order that the individual retains the right to  
3 exercise the right only with consent of the guardian of the person.

4 4. Regardless of whether a guardian is appointed, a court may declare that an  
5 individual is not competent to exercise the right to vote if it finds by clear and  
6 convincing evidence that the individual is incapable of understanding the objective  
7 of the elective process. If the petition for a declaration of competence to vote is not  
8 part of a petition for guardianship, the same procedures shall apply as would apply  
9 for a petition for guardianship.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under subd. 1. g., above.

10 (d) *Guardian authority to exercise certain powers.*

11 1. A court may authorize a guardian of the person to exercise all or part of any  
12 of the powers specified in subd. 2. only if it finds, by clear and convincing evidence,  
13 that the individual lacks evaluative capacity to exercise the power. The court shall  
14 authorize the guardian to exercise only those powers that are necessary to provide  
15 for the individual's personal needs, safety, and rights and to exercise the powers in  
16 a manner that is appropriate to the individual and that constitutes the least  
17 restrictive form of intervention. The court may limit the authority of the guardian  
18 with respect to any power to allow the individual to retain power to make decisions  
19 about which the individual is able effectively to receive and evaluate information and  
20 communicate decisions.

21 2. All of the following are powers subject to subd. 1.:

22 a. Except as provided under subd. 2. b., c., and d., and except for consent to  
23 psychiatric treatment and medication under ch. 51, the power to give informed  
24 consent, if in the ward's best interests, to voluntary or involuntary medical

1 examination and treatment and to the voluntary receipt by the ward of medication,  
2 including any appropriate psychotropic medication, if the guardian has first made  
3 a good-faith attempt to discuss with the ward the ward's voluntary receipt of the  
4 psychotropic medication and the ward does not protest. For purposes of this  
5 subdivision 2. a., "protest" means make more than one discernible negative response,  
6 other than mere silence, to the offer of, recommendation for, or other proffering of  
7 voluntary receipt of psychotropic medication. "Protest" does not mean a discernible  
8 negative response to a proposed method of administration of the psychotropic  
9 medication. A guardian may consent to the involuntary administration of  
10 psychotropic medication only pursuant to a court order under ch. 55. In determining  
11 whether medication or medical treatment is in the ward's best interest, the guardian  
12 shall consider the invasiveness of the medication or treatment and the likely benefits  
13 and side effects of the medication or treatment.

14 b. Unless it can be shown by clear and convincing evidence that the ward would  
15 never have consented to research participation, the power to authorize the ward's  
16 participation in an accredited or certified research project if the research might help  
17 the ward; or if the research might not help the ward by might help others, and the  
18 research involves no more than minimal risk of harm to the ward.

19 c. The power to authorize the ward's participation in research that might not  
20 help the ward but might help others even if the research involves greater than  
21 minimal risk of harm to the ward if the guardian can establish by clear and  
22 convincing evidence that the ward would have elected to participate in such  
23 research; and the proposed research was reviewed and approved by the research and  
24 human rights committee of the institution conducting the research. The committee  
25 shall have determined that the research complies with the principles of the



1 statement on the use of human subjects for research adopted by the American  
2 Association on Mental Deficiency, and with the federal regulations for research  
3 involving human subjects for federally supported projects.

4 d. Unless it can be shown by clear and convincing evidence that the ward would  
5 never have consented to any experimental treatment, the power to consent to  
6 experimental treatment if the court finds that the ward's mental or physical status  
7 presents a life-threatening condition; the proposed experimental treatment may be  
8 a life saving remedy; all other reasonable traditional alternatives have been  
9 exhausted; two examining physicians have recommended the treatment; and, in the  
10 court's judgment, the proposed experimental treatment is in the ward's best  
11 interests.

12 e. The power to give informed consent to social and supported living services.

13 f. The power to give informed consent to release of medical, treatment, and  
14 other confidential records.

15 g. The power to determine the individual's county or state of residence.

16 h. The power to make decisions related to mobility and travel.

17 i. The power to admit the individual to residential facilities as provided under  
18 s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11).

19 j. The power to choose providers of medical, social, and supported living  
20 services.

21 k. The power to make decisions regarding educational and vocational  
22 placement and support services or employment.

23 L. The power to make decisions regarding initiating a petition for the  
24 termination of marriage.

25 m. The power to receive all notices on behalf of the ward.

1 n. The power to act in all proceedings as an advocate of the ward, except the  
2 power to enter into a contract that binds the ward or the ward's property or to  
3 represent the ward in any legal proceedings pertaining to the property, unless the  
4 guardian of the person is also the guardian of the estate.

5 o. The power to apply for protective placement under s. 55.06 or for  
6 commitment under s. 51.20 or 51.45 (13) for the ward.

7 p. The power to have charge of the ward.

\*\*\*\*NOTE: In s. 54.25 (2) (d) 2. i., m., n., o., and p., I have attempted to "weave" in the parts of s. 880.38 (1), stats., that seemed to fit (in LRB-0039/P1, this provision was renumbered s. 54.25 (1) (c), but it didn't fit well there. The power to "have charge of" the ward is a change from the statutory "have custody of"; is it an acceptable wording change? Back again to my confusion about prohibiting the guardian of the person from entering into a contract that binds the ward — what about a contract with a facility (e.g., a nursing home), which requires a financial commitment? Would it be necessary for the guardian of the estate to sign? If the prohibition is unchanged, the power of the guardian of the person to "admit a ward to certain residential facilities" under subd. i. is, it would seem, significantly less that it first appears to be.

8 r. Any other power the court may specifically identify.

9 3. In exercising powers and duties delegated to the guardian of the person  
10 under this paragraph, the guardian of the person shall, consistent with meeting the  
11 individual's essential requirements for health and safety and protecting the  
12 individual from abuse, exploitation and neglect, do all of the following:

13 a. Place the least possible restriction on the individual's personal liberty and  
14 exercise of constitutional and statutory rights, and promote the greatest possible  
15 integration of the individual into his or her community.

16 b. Make diligent efforts to identify and honor the individual's preferences with  
17 respect to choice of place of living, personal liberty and mobility, choice of associates,  
18 communication with others, personal privacy, and choices related to sexual  
19 expression and procreation. In making a decision to act contrary to the individual's  
20 expressed wishes, the guardian shall take into account the individual's

1 understanding of the nature and consequences of the decision, the level of risk  
2 involved, the value of the opportunity for the individual to develop decision-making  
3 skills, and the need of the individual for wider experience.

#### 4 SUBCHAPTER IV

#### 5 PROCEDURES

##### 6 54.30 Jurisdiction and venue.

7 (3) (b) 1. A person shall file a petition for change of venue in the county in which  
8 venue for the guardianship currently lies.

9 2. The person filing the petition under subd. 1. shall give notice to the  
10 corporation counsel of the county in which venue for the guardianship currently lies  
11 and to the register in probate for the county to which change of venue is sought.

\*\*\*NOTE: Should notice also be given to the corporation counsel of the county to  
which change of venue is sought?

12 3. If no objection to the change of venue is made within 15 days after the date  
13 on which notice is given under subd. 2., the circuit court of the county in which venue  
14 for the guardianship currently lies may enter an order changing venue. If objection  
15 to the change of venue is made within 15 days after the date on which notice is given  
16 under subd. 2., the circuit court of the county in which venue for the guardianship  
17 currently lies shall set a date for a hearing within 7 days after the objection is made  
18 and shall give notice of the hearing to the corporation counsel of that county and to  
19 the corporation counsel and register in probate of the county to which change of  
20 venue is sought.

21 54.34 (1) (k) Whether the proposed ward is a recipient of a public benefit,  
22 including medical assistance or a benefit under s. 46.27.

1 (L) The agent under any current, valid power of attorney for health care or  
2 durable power of attorney that the proposed ward has executed.

3 (m) Whether the petitioner is requesting a full or limited guardianship and, if  
4 limited, the specific authority sought by the petitioner for the guardian or the specific  
5 rights of the individual that the petitioner seeks to have removed or transferred.

6 (n) Whether the proposed ward, if married, has children who are not children  
7 of the current marriage.

8 **54.38 Notice. (1) FORM AND DELIVERY OF NOTICE.** A notice shall be in writing.  
9 A copy of the petition, motion, or other required document shall be attached to the  
10 notice. Unless otherwise provided, notice may be delivered in person, by certified  
11 mail with return receipt requested, or by facsimile transmission. Notice is  
12 considered to be given by proof of personal delivery or by proof that the notice was  
13 mailed to the last-known address of the recipient or was sent by facsimile  
14 transmission to the last-known facsimile transmission number of the recipient.

\*\*\*\*NOTE: Instead of drafting "petition or other moving papers," I consulted Bob Nelson, the civil procedure drafter, who suggested "petition, motion, or other required document." This same comment applies to s. 54.38 (2) (a).

15 (2) (b) Personally or by mail at least 10 days before the time set for hearing,  
16 to all of the following:

- 17 1. The proposed ward's counsel, if any.
- 18 2. The proposed ward's guardian ad litem.
- 19 3. Any presumptive adult heirs of the proposed ward.
- 20 4. Any other interested persons, unless specifically waived by the court.
- 21 5. The agent under any durable power of attorney or power of attorney for  
22 health care of the ward.
- 23 6. Any person who has legal or physical custody of the proposed ward.

1           7. Any public or private agency, charity, or foundation from which the proposed  
2 ward is receiving aid or assistance.

3           8. Any other person that the court requires.

4           54.40 (4) (c) Interview the proposed guardian, the proposed standby guardian,  
5 if any, and any other person seeking appointment as guardian and report to the court  
6 concerning the fitness of each individual interviewed to serve as guardian and  
7 concerning the report under s. 54.15 (8).

      \*\*\*\*NOTE: Have I handled this provision as the memo intends? It was not clear to  
me that it had been agreed to employ the criminal history and patient abuse record search  
under s. 50.065, stats., for s. 54.15 (8) or here.

8           (d) 1. Review any power of attorney for health care under ch. 155, or any  
9 durable power of attorney executed by the proposed ward or any other advance  
10 planning to avoid guardianship in which the proposed ward had engaged.

11           2. Interview any agent appointed by the proposed ward under any document  
12 specified in subd. 1.

13           3. Report to the court concerning whether or not the proposed ward's advance  
14 planning is adequate to preclude guardianship.

15           (g) If the proposed ward requests representation by counsel, inform the court  
16 and the petitioner or the petitioner's counsel, if any.

17           (h) Attend all court proceedings related to the guardianship.

18           **54.42 Rights of proposed ward. (1) RIGHT TO COUNSEL.** (a) 1. The proposed  
19 ward requests counsel.

20           2. The guardian ad litem or another person states to the court that the proposed  
21 ward is opposed to the guardianship petition.

22           3. The court determines that the interests of justice require counsel for the  
23 proposed ward.

1 (b) Any attorney obtained under par. (a) or appointed under par. (c) shall be an  
2 advocate for the expressed wishes of the proposed ward.

3 (2) RIGHT TO JURY TRIAL. The proposed ward has the right to a trial by a jury  
4 if demanded by the proposed ward, his or her attorney, or the guardian ad litem,  
5 except that the right is waived unless demanded at least 48 hours before the time set  
6 for the hearing. The number of jurors for such a trial is determined under s. 756.06  
7 (2) (b). The proposed ward, his or her attorney, or the guardian ad litem each has the  
8 right to present and cross-examine witnesses, including any physician or licensed  
9 psychologist who reports to the court concerning the proposed ward.

\*\*\*\*NOTE: I did not change "or" to "and" in the third sentence, as requested, because  
it is important to avoid the implication that the ward, attorney, and GAL must act jointly  
to present and cross-examine witnesses. I did, however, add "each," to distinguish the  
actor for that sentence from the actor in the first sentence. In ordinary statutory usage,  
however, "or," when used to link several actors, allows each actor to perform the action  
and does not exclude one from the other.

10 (3) RIGHT TO INDEPENDENT MEDICAL EXAMINATION.

11 (5) RIGHT TO BE PRESENT AT HEARING. The proposed ward has the right to be  
12 present at any hearing regarding the guardianship.

13 (6) RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward has the right  
14 to have any hearing regarding the guardianship conducted in a location that is  
15 accessible to the proposed ward.

16 **54.44 Hearing.** (1) TIME OF HEARING; PROVISION OF REPORTS. A petition for  
17 guardianship other than a petition under the circumstances of s. 54.50 (1) or (2), shall  
18 be heard within 90 days after it is filed. The guardian ad litem and attorney for the  
19 proposed ward shall be provided with a copy of the statement of the examining  
20 physician or psychologist under s. 54.36 at least 96 hours before the time of the  
21 hearing.

\*\*\*\*NOTE: Note that I added s. 54.50 (1), as well as s. 54.50 (2), as exceptions to the 90-day time limit. Note also, that, pending your decision, s. 54.50 (2) may be moved to ch. 55, stats., as an "admission without court involvement," since it does not, at least initially, depend on a guardianship for its action. However, please see the following  
\*\*\*\*NOTE.

\*\*\*\*NOTE: Your proposed material does not affect s. 880.075, stats. If you do not intend that I repeal it, where should I put it? Should I make an exception for it in s. 54.44 (1)?

1           (2) STANDARD OF PROOF. Any determination by the court as to whether the  
2 proposed ward is incompetent shall be by clear and convincing evidence.

3           (3) PRESENCE OF PROPOSED GUARDIAN. The proposed guardian and any proposed  
4 standby guardian shall be physically present at the hearing unless the court excuses  
5 the attendance of either or, for good cause shown, permits attendance by telephone.

6           (4) PRESENCE OF PROPOSED WARD. The petitioner shall ensure that the proposed  
7 ward attends the hearing unless the attendance is waived by the guardian ad litem.  
8 In determining whether to waive attendance by the proposed ward, the guardian ad  
9 litem shall consider the ability of the proposed ward to understand and meaningfully  
10 participate, the effect of the proposed ward's attendance on his or her physical or  
11 psychological health in relation to the importance of the proceeding, and the  
12 proposed ward's expressed desires. If the proposed ward is unable to attend the  
13 hearing because of residency in a nursing home or other facility, physical  
14 inaccessibility, or a lack of transportation and if the proposed ward, guardian ad  
15 litem, advocate counsel, or other interested person so requests, the court shall hold  
16 the hearing in a place where the proposed ward may attend.

17           (6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed  
18 guardian is inappropriate, the court shall request that a petition proposing a suitable  
19 guardian be filed, shall set a date for a hearing to be held within 30 days, and shall

1 require the guardian ad litem to investigate the suitability of a new proposed  
2 guardian.

3 **54.46 Disposition of petition.** After the hearing under s. 54.44, the court  
4 shall dispose of the case in one of the following ways:

5 (1) DISMISSAL OF THE PETITION. (a) If the court finds any of the following, the  
6 court shall dismiss the petition:

7 1. Contrary to the allegations of the petition, the proposed ward is not any of  
8 the following:

9 a. Incompetent.

10 b. A spendthrift.

11 c. A minor.

12 2. Advance planning by the ward renders guardianship unnecessary.

13 3. The elements of the petition are unproven.

14 (b) The court may also consider an application by the proposed ward for the  
15 appointment of a conservator under s. 54.76.

16 (2) PROTECTIVE ARRANGEMENT; FINANCIAL TRANSACTIONS; APPOINTMENT OF SPECIAL  
17 GUARDIAN. (a) If a proposed ward is found to be a minor, incompetent, or a spendthrift,  
18 the court may, without appointing a guardian, do any of the following if the court first  
19 considers the interests of dependents and creditors of the ward and whether a  
20 guardianship is necessary, given the ward's functional level:

21 1. Authorize, direct, or ratify any transaction or series of transactions  
22 necessary to achieve any security, service, or care arrangement that meets the  
23 foreseeable needs of the ward.



1           2. Authorize, direct, or ratify a contract, trust, or other transaction related to  
2           the ward's property or financial affairs if necessary as a means of providing for the  
3           personal needs of or property management for the ward.

4           (b) The court may appoint a special guardian to assist in the accomplishment  
5           of any protective arrangement or transaction under par. (a). The special guardian  
6           has any authority conferred by the order of appointment, shall report to the court on  
7           all actions taken under the order of appointment, and shall serve until discharged  
8           by order of the court. The court may approve a reasonable compensation for the  
9           special guardian, except that, if the court finds that the special guardian has failed  
10          to discharge his or her duties satisfactorily, the court may deny or reduce the amount  
11          of compensation or remove the special guardian.

          \*\*\*NOTE: Should the compensation language be under subch. V, around s. 54.72  
          or 54.74, instead of here?

12          (3) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be  
13          incompetent, a minor, or a spendthrift, the court may enter a determination and  
14          order appointing a guardian that specifies any powers of the guardian that require  
15          court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of  
16          the following:

          \*\*\*NOTE: I have assumed that s. 54.46 (3) was intended to replace s. 880.12, stats.,  
          although s. 54.46 (3) makes no mention of the language under s. 880.12 (2), stats. On  
          Betsy Abramson's advice, I have repealed s. 880.12.

17          (a) *Co-guardians.* The court may appoint co-guardians of the person or  
18          co-guardians of the estate, subject to any conditions that the court imposes. Unless  
19          otherwise ordered by the court, each decision made by a co-guardian with respect  
20          to the ward must be concurred in by any other co-guardian, or the decision is void.

21          (c) *Durable power of attorney.* If the ward has executed a durable power of  
22          attorney, the durable power of attorney remains in effect, except that the court may,

1 only for good cause shown, revoke the durable power of attorney or limit the  
2 authority of the agent under the terms of the durable power of attorney.

\*\*\*\*NOTE: This provision may require amending the durable power of attorney chapter, which will, if necessary, be done in a subsequent version.

3 (4) (c) *Fees if guardian is not appointed.* If a guardian is not appointed under  
4 sub. (2) or (3), the county in which venue lies for the guardianship proceeding is the  
5 county liable for any fees due the guardian ad litem. The proposed ward is liable for  
6 any fees due his or her legal counsel, except as follows:

7 1. If counsel is appointed under s. 977.08, the proposed ward is liable only for  
8 the fees applicable under s. 977.07 and 977.075.

9 2. If the court finds the petition for guardianship frivolous under s. 814.025, the  
10 court may assess fees to the petitioner.

11 3. If the proposed ward is indigent and counsel is not appointed under s. 977.08,  
12 the county in which venue lies for the guardianship proceeding is liable.

\*\*\*\*NOTE: I included in this paragraph mention of public defender representation, because par. (b) mentions it. Is that drafted as you wish?

13 **54.50 Temporary guardianships.** (1) (a) *Standard.* If it is demonstrated  
14 to the court that a proposed ward's particular situation, including the needs of the  
15 proposed ward's dependents, requires the immediate appointment of a temporary  
16 guardian of the person or estate, the court may appoint a temporary guardian under  
17 this section.

18 (c) *Procedures for appointment.* All of the following procedures apply to the  
19 appointment of a temporary guardian:

20 1. Any person may petition for the appointment of a temporary guardian for  
21 an individual. The petition shall contain the information required under s. 54.34 (1),  
22 shall specify reasons for the appointment of a temporary guardian and the powers

1 requested for the temporary guardian, and shall include a petition for appointment  
2 of a guardian of the person or estate or state why such a guardianship is not sought.

\*\*\*\*NOTE: Note that the notice provisions concerning petition and hearing for  
temporary guardianship have been moved from this section to s. 54.38 (6).

3 2. The court shall appoint a guardian ad litem, who shall attempt to meet with  
4 the proposed ward before the hearing or as soon as is practicable after the hearing,  
5 but not later than 7 calendar days after the hearing. The guardian ad litem shall  
6 report to the court on the advisability of the temporary guardianship at the hearing  
7 or not later than 10 calendar days after the hearing.

8 3. The court shall hold a hearing on the temporary guardianship no earlier than  
9 48 hours after the filing of the petition unless good cause is shown. At the hearing,  
10 the petitioner shall provide a report or testimony from a physician or psychologist  
11 that indicates that there is a reasonable likelihood that the proposed ward is  
12 incompetent. The guardian ad litem shall attend the hearing in person or by  
13 telephone or, instead, shall provide to the court a written report concerning the  
14 proposed ward for review at the hearing.

15 4. If the court appoints a temporary guardian and if the ward, his or her  
16 counsel, the guardian ad litem, or an interested party requests, the court shall order  
17 a rehearing on the issue of appointment of the temporary guardian within 10  
18 calendar days after the request. If a rehearing is requested, the temporary guardian  
19 may take no action to expend the ward's assets, pending a rehearing, without  
20 approval by the court.

21 (2) (h) If the allegedly incapacitated individual, his or her guardian ad litem,  
22 or any interested person objects to the admission, the individual, guardian ad litem,  
23 or person may request the court in which the guardianship petition is pending to hold

1 a hearing on whether the individual is incapacitated or whether the admission shall  
2 continue before the guardianship hearing. If requested, the court shall hold such a  
3 hearing within 7 calendar days after receipt of the request.

\*\*\*\*NOTE: If you do not want sub. (2) to be under s. 54.50, where do you want it to  
be placed?

#### 4 SUBCHAPTER V

#### 5 POST-APPOINTMENT MATTERS

6 54.60 (2) CONTENTS OF INVENTORY. The inventory shall provide all of the  
7 following information with respect to each asset:

8 (a) How the asset is held or titled.

9 (b) The name and relationship to the ward of any co-owner.

10 (c) The marital property classification of the property and, for any property that  
11 is marital property, the spouse who has management and control rights with respect  
12 to the property.

13 (3) TIME FOR FILING. The guardian of the estate shall file the initial inventory  
14 within 60 days after appointment, unless the court extends or reduces the time.

15 (4) NOTICE OF INVENTORY. The court shall specify the persons to whom the  
16 guardian shall provide copies of the inventory.

17 (5) FEE. The guardian of the estate shall pay from the ward's estate the fee  
18 specified in s. 814.66 (1) (b) 2. at the time the inventory or other documents  
19 concerning the estate's value are filed.

20 (6) APPRAISAL. The court may order that the guardian of the estate appraise  
21 all or any part of the ward's estate.

22 54.62 Accounts.

1           (3) SMALL ESTATES. (a) If a ward's estate does not exceed \$5,000 in value, the  
2       guardian need not file an account under sub. (1) unless otherwise ordered to do so  
3       by the court. For the purposes of this paragraph, the value of the ward's estate does  
4       not include the ward's income, any burial trust possessed by the ward, or any term  
5       or other life insurance policy that is irrevocably assigned to pay for the disposition  
6       of the ward's remains at death.

7           (b) If the ward's estate, as calculated under par. (a), increases above \$5,000 in  
8       value, the guardian shall so notify the court, which shall determine if an annual  
9       account under sub. (1) or a final account under s. 54.66 is required.

10          (4) ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may  
11       waive filing of an annual account under sub. (1) or permit the filing of a modified  
12       annual account, which shall be signed by the ward's guardian and spouse and shall  
13       consist of all of the following:

14           1. Total assets of the ward, as determined under ch. 766, on January 1 of the  
15       year in question.

16           2. Income in the name of the ward, without regard to ch. 766, and the ward's  
17       joint income.

18           3. Expenses incurred on behalf of the ward, including the ward's proportionate  
19       share of household expenses if the ward and the ward's spouse reside in the same  
20       household, without regard to ch. 766.

21           4. Total assets of the ward, as determined under ch. 766, on December 31 of the  
22       year in question.

\*\*\*\*NOTE: I may have questions about this subsection after consulting with the  
Domestic Relations drafter.

1 (b) The court shall provide notice of the waiver under par. (a) to any adult child  
2 of the ward.

3 (7) (a) The ward.

4 (b) Any guardian ad litem appointed by the court.

5 (c) Any personal representative or special administrator appointed by the  
6 court.

7 **54.63 Expansion of order of guardianship; procedure.** (1) If the  
8 guardian or another interested person submits to the court a written statement with  
9 relevant accompanying support requesting the removal of rights from the ward and  
10 transfer to the guardian of powers in addition to those specified in the order of  
11 appointment of the guardian, based on an expansion of the ward's incapacity, the  
12 court shall do all of the following:

13 (a) Appoint a guardian ad litem for the ward.

14 (b) Order that notice, including notice concerning potential court action if  
15 circumstances are extraordinary, be given to all of the following:

16 1. The county department of social services or human services if the ward is  
17 protectively placed or receives long-term support services as a public benefit.

18 2. The ward.

19 3. The guardian.

20 4. The agent under the ward's power of attorney for health care under ch. 155  
21 or durable power of attorney, if any.

22 5. Any other persons determined by the court.

23 (2) (a) If, after 10 days after notice is provided under sub. (1) (b), or earlier if  
24 the court determines that the circumstances are extraordinary, no person submits  
25 to the court an objection to the request under sub. (1), the court may amend the order

1 entered under s. 54.46 (3) and enter a determination and the amended order that  
2 specifies any change in the powers of the guardian.

3 (b) If, within 10 days after notice is provided under sub. (1) (b), a person submits  
4 to the court an objection to the request under sub. (1), any person may request a  
5 hearing under the procedure specified in s. 54.64 (2).

6 **54.64 (2) REVIEW AND MODIFICATION.**

7 (a) 1. Appoint a guardian ad litem.

8 2. Fix a time and place for hearing.

9 3. Designate the persons who are entitled to notice of the hearing and designate  
10 the manner in which the notice shall be given.

11 (b) The ward has the right to counsel for purposes of the hearing under par. (a).  
12 Notwithstanding any finding of incompetence for the ward, the ward may retain and  
13 contract for the payment of reasonable fees to an attorney, the selection of whom is  
14 subject to court approval, in connection with proceedings involving review of the  
15 terms and conditions of the guardianship, including the question of incompetence.  
16 The court shall appoint counsel if the ward is unable to obtain counsel. If the ward  
17 is indigent the county of jurisdiction for the guardianship shall provide counsel at the  
18 county's expense.

19 **(3) (b)** The ward changes residence from this state to another state and a  
20 guardian is appointed in the new state of residence.

\*\*\*NOTE: What if the guardian changes residence from this state to another state?

21 (e) The ward dies.

22 **(4) (b)** The ward changes residence from this state to another state and a  
23 guardian is appointed in the new state of residence.

\*\*\*NOTE: What if the guardian changes residence from this state to another state?

1           (5) (b) Continue the guardianship, but waive requirements for a bond for the  
2 guardian and for accounting by the guardian.

3           **54.66 Final accounts.**

4           (3) DISCHARGE. After approving the final account and after the guardian has  
5 filed proper receipts, the court shall discharge the guardian and release the  
6 guardian's bond.

7           **54.68 Review of conduct of guardian. (1)** CONTINUING JURISDICTION OF  
8 COURT. The court that appointed the guardian shall have continuing jurisdiction over  
9 the guardian.

10          (2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if  
11 committed by a guardian with respect to a ward or the ward's estate, constitutes  
12 cause for a remedy of the court under sub. (4):

13          (a) Failing to timely file an inventory or account, as required under this  
14 chapter, that is accurate and complete.

15          (b) Committing fraud, waste, or mismanagement.

16          (c) Abusing or neglecting the ward or knowingly permitting others to do so.

17          (d) Engaging in self-dealing.

18          (e) Failing to adequately provide for the personal needs of the ward from  
19 available estate assets and public benefits.

20          (f) Failing to exercise due diligence and reasonable care in assuring that the  
21 ward's personal needs are being met in the least restrictive environment consistent  
22 with the ward's needs and incapacities.

23          (g) Failing to act in the best interests of the ward.

24          (h) Failing to disclose conviction for a crime that would have prevented  
25 appointment of the person as guardian.



1 (i) Other than as provided in pars. (a) to (h), failing to perform any duties of a  
2 guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19,  
3 54.20, 54.22, 54.25, and 54.62.

\*\*\*\*NOTE: In LRB-0039/P1, my \*\*\*\*NOTE under this paragraph in part stated that, although the memo specified ss. 880.192 and 880.251, stats., as cross-references, they were not otherwise touched by the proposal. I now think that s. 880.192, stats., is duplicated by provisions in pars. (b), (d), and (e) and so is unnecessary; I have repealed it. Section 880.251, stats., seems pretty well, although not entirely, duplicated by sub. (2) and s. 54.18 (3); I have repealed it. Please review.

4 (3) PROCEDURE. Upon the filing of a petition for review of the conduct of a  
5 guardian, the court shall hold a hearing in not less than 10, nor more than 60, days  
6 and shall order that notice of the hearing be provided to the ward, the guardian, and  
7 any other persons as determined by the court.

\*\*\*\*NOTE: The provider of notice is, I assume, specified in the order. Is "notice of the hearing" correct, or is there additional notice of the filing of the petition? Should any of this be under s. 54.38?

8 (4) REMEDIES OF THE COURT. If petitioned by any party or on the court's own  
9 motion and after finding cause as specified in sub. (2), a court may do any of the  
10 following:

11 (a) Order the guardian to file an inventory or other report or account required  
12 of the guardian.

13 (b) Require the guardian to reimburse the estate of the ward for losses incurred  
14 as the result of the guardian's breach of a duty to the ward.

15 (c) Impose a financial penalty on the guardian, including denial of  
16 compensation for the guardian.

17 (d) Remove the guardian.

18 (e) Enter any other order that may be necessary or appropriate to compel the  
19 guardian to act in the best interests of the ward or to otherwise carry out the  
20 guardian's duties.

1           (5) REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if  
2 changed circumstances indicate that a previously unavailable volunteer guardian is  
3 available to serve and that the change would be in the best interests of the ward.

4           (6) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (5), all  
5 of the following apply:

6           (a) The court may require the guardian to pay personally any costs of the  
7 proceeding, including costs of service and attorney fees.

8           (b) Notwithstanding a finding of incompetence, a ward who is petitioning the  
9 court under sub. (2) may retain an attorney, the selection of whom is subject to court  
10 approval, and contract for the payment of fees, regardless of whether or not the  
11 guardian consents or whether or not the court finds cause under sub. (2).

12           54.70 (7) Provide a summary written report to the court.

13           (9) Attend the hearing.

      \*\*\*\*NOTE: You asked why 54.70 (6m) (now renumbered 54.70 (7)) and (9m) (now  
renumbered 54.70 (9)) had had odd numbering. I've been unable to figure out why, but  
it doesn't seem to have been the result of an underlying problem.

14           **54.72 Guardian compensation and reimbursement.** A guardian of the  
15 person or a guardian of the estate is entitled to compensation and to reimbursement  
16 for expenses as follows:

17           (1) COMPENSATION. (a) Subject to the court's approval, as determined under par.  
18 (b), a guardian shall receive reasonable compensation for the guardian's services.

19           (b) The court shall use all of the following factors in deciding whether  
20 compensation for a guardian is just and reasonable:

21           1. The reasonableness of the services rendered.

22           2. The fair market value of the service rendered.

23           3. Any conflict of interest of the guardian.